

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2581

By: Steidley

AS INTRODUCED

An Act relating to state government; amending 74 O.S. 1991, Sections 61.4, 85.34, as amended by Section 3, Chapter 177, O.S.L. 1993, 85.34A, as amended by Section 4, Chapter 44, O.S.L. 1992, 85.35, 85.37, as amended by Section 1, Chapter 133, O.S.L. 1993 and 85.38 (74 O.S. Supp. 1993, Sections 85.34, 85.34A and 85.37), which relate to the Department of Central Services; authorizing employment of certain attorneys for entities other than state agencies covered by the Comprehensive Professional Risk Management Program; modifying certain essentials of the program; requiring the Risk Management Administrator to be in the unclassified service; modifying powers and duties; requiring certain procured liability insurance coverage to include legal services; modifying and changing the name of the Property and Casualty Revolving Fund to the Risk Management Revolving Fund; creating certain accounts; providing for deposits and expenditures; authorizing certain fees from various entities; requiring payment; modifying time when due; removing obsolete language; amending 62 O.S. 1991, Section 203, as amended by Section 32, Chapter 327, O.S.L. 1992 (62 O.S. Supp. 1993,

Section 203), which relates to interest from state monies; authorizing deposit of interest into Risk Management Revolving Fund; repealing 74 O.S. 1991, Section 85.36, which relates to the Motor Vehicle Liability Revolving Fund; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 1991, Section 61.4, is amended to read as follows:

Section 61.4 The Director of ~~Public Affairs~~ Central Services shall employ an attorney to serve as legal counsel for the ~~Office of Public Affairs~~ Department of Central Services. The attorney shall be authorized to appear for and represent the ~~Office of Public Affairs~~ Department of Central Services in all litigation that may arise from the discharge of its duties, except as otherwise provided in this section, and shall advise it upon all legal matters pertaining to the ~~Office of Public Affairs~~ Department of Central Services. The salary for the attorney shall be fixed by the Director. Any litigation concerning the Comprehensive Professional Risk Management Program of the ~~Office of Public Affairs~~ Department of Central Services shall be handled by the Attorney General of the State of Oklahoma, provided the Director of Central Services may employ private attorneys to handle any litigation which involves entities other than state agencies which are covered by the Comprehensive Professional Risk Management Program. The attorney and, in addition, the Attorney General, are further authorized to appear for and represent officers and employees of the ~~Office of Public Affairs~~ Department of Central Services in any civil suits brought against such officers and employees in their individual

capacities upon alleged causes of action which arose from acts or omissions of such officers and employees within the scope of their official duties.

SECTION 2. AMENDATORY 74 O.S. 1991, Section 85.34, as amended by Section 3, Chapter 177, O.S.L. 1993 (74 O.S. Supp. 1993, Section 85.34), is amended to read as follows:

Section 85.34 A. The Department of Central Services is hereby directed to establish for all state agencies, whether or not subject to the Central Purchasing Act, and for such other entities as provided by law a comprehensive professional risk management program which shall:

1. Identify and evaluate all risks for state agencies and such other entities as provided by law;

2. Eliminate, reduce, or minimize all risks through a continuous effective loss-prevention and loss-control program;

3. Transfer risks if it is economically advantageous to the state to do so, by acquiring commercial insurance, or by contractual pass-off of liability, or by other means;

4. Consolidate and administer all plans and programs pertaining to risk management including self-insurance programs, except Workers' Compensation Insurance and State Employees Group Insurance;

5. Determine feasibility of self-insurance programs;

6. Establish, if feasible, such self-insurance programs and ensure that each program is fully self-supporting and is not dependent upon payments for insurance coverage under other programs to remain financially and actuarially sound;

7. Require payment by agencies for insurance provided by the risk management program;

8. When requested by a state retirement system, the State Insurance Fund or the State and Education Employees Group Insurance Board, assist the state retirement system, the Fund or the Board in obtaining indemnity insurance authorized by law or when requested by

the Oklahoma State Regents for Higher Education, assist trust funds for which the State Regents serve as trustees in obtaining indemnity insurance authorized by law; and

9. Assist any state agency, board, commission, or department, and any officers, employees, and members thereof, charged with any type of licensing authority in obtaining indemnity insurance for liability for judgments based on the licensing authority rendered by any court pursuant to federal law.

B. The Director of the Department of Central Services is authorized to hire or contract for the services of a Risk Management Administrator who shall supervise ~~the purchase of property and casualty insurance for all state-owned real and personal property~~ all aspects of the Comprehensive Professional Risk Management Program established pursuant to this section. If appointed by the Director as a state employee, the Risk Management Administrator shall be in the unclassified service.

C. The Risk Management Administrator shall also be responsible for the continuing evaluation of the insurance coverage needed by the state and the insurance coverage in force. All state agencies shall submit to the Risk Management Administrator any information which the Risk Management Administrator deems necessary to perform this duty.

D. The school districts of this state are authorized to request the Risk Management Administrator to supervise the purchase of insurance coverage for the school districts.

E. Prior to purchase of property and casualty insurance by any state agency, details of the proposed purchase shall be submitted to the Risk Management Administrator for approval or disapproval.

F. Any state agency, board, commission, or department, and any officers, employees, and members thereof, charged with any type of licensing authority may obtain indemnity insurance for liability for judgments based on any action taken pursuant to the licensing

authority rendered by any court pursuant to federal law. Prior to purchase of said insurance, details of the proposed purchase shall be submitted to the Risk Management Administrator for approval or disapproval.

G. The Director of the Department of Central Services shall promulgate rules necessary to effect the provisions of this risk management program.

H. 1. Any community action agency established pursuant to Sections 5035 through 5040 of this title when distributing food stamps and otherwise participating in the food stamp program pursuant to a contract entered into pursuant to Section 241 of Title 56 of the Oklahoma Statutes shall be eligible to participate in the comprehensive professional risk management program established pursuant to this section.

2. The Risk Management Administrator shall obtain or provide for insurance coverage for a community action agency or bonding for agency employees for risks incurred as a result of distribution of food stamps or coupons including but not limited to losses of food stamps by theft or embezzlement. Any liability insurance coverage obtained or provided shall include expenses for legal services obtained or provided by the Risk Management Administrator.

3. The Risk Management Administrator shall determine criteria for participation in the risk management program by such community action agencies. In addition, the Risk Management Administrator may require each community action agency to provide adequate qualified personnel, and suitable facilities for storing and issuing food stamps or coupons, and comply with such other standards that are necessary for the protection of the food stamps or coupons when in the care, custody and control of the community action agencies.

4. To receive coverage pursuant to this section, a community action agency shall be required to make payments for any insurance coverage and shall otherwise comply with the provisions of this

section and rules promulgated by the Department pursuant to the provisions of this section.

5. Requests for the insurance coverage provided pursuant to the provisions of this section shall be submitted in writing to the Risk Management Administrator by the community action agencies.

SECTION 3. AMENDATORY 74 O.S. 1991, Section 85.34A, as amended by Section 4, Chapter 44, O.S.L. 1992 (74 O.S. Supp. 1993, Section 85.34A), is amended to read as follows:

Section 85.34A A. The Risk Management Administrator, pursuant to the provisions of this section and Section 85.34 of this title, may obtain or provide insurance coverage for any vehicle, vessel, aircraft or building used for or in fire fighting or services provided by the districts, departments and services specified in subsection C of this section and may obtain or provide indemnity coverage for any board member, official, employee or volunteer of any entity specified in subsection C of this section for any errors and omissions or liability risks arising from the performance of their official duties pursuant to law.

B. The Risk Management Administrator is authorized to determine eligibility criteria for participation in the Risk Management Program by such districts, departments and services or for such member, officer, employee or volunteer. In addition, the Risk Management Administrator is authorized to establish equipment and safety standards for the vehicles, vessels, aircraft or buildings to be covered by the Risk Management Program.

C. The Risk Management Administrator may obtain or provide the insurance coverage authorized by subsection A of this section for:

1. Fire protection districts organized and operated pursuant to the provisions of Sections 901.1 through 901.29 of Title 19 of the Oklahoma Statutes;

2. Volunteer or full-time fire departments established pursuant to Section 592 of Title 18 of the Oklahoma Statutes;

3. Municipal fire departments organized and operated pursuant to the provisions of Sections 29-101 through 29-108, and Sections 29-201 through 29-205 of Title 11 of the Oklahoma Statutes;

4. Fire protection services established pursuant to the provisions of Section 351 of Title 19 of the Oklahoma Statutes; and

5. Rural fire coordinators employed by substate planning districts acting pursuant to rural fire defense programs.

D. The governing authorities of such fire departments, fire protection districts and fire protection services shall be required to make payments for such insurance coverage as provided by Section 85.37 of ~~Title 74 of the Oklahoma Statutes~~ this title.

E. Requests for the insurance or indemnity coverage provided pursuant to the provisions of this section shall be submitted in writing to the Risk Management Administrator by the fire departments, fire protection districts or fire protection services specified in subsection C of this section. Those fire departments, fire protection districts or fire protection services meeting eligibility criteria shall be approved for participation in the Risk Management Program by the Risk Management Administrator if the member, officer, employee or volunteer, and the vehicles, vessels, aircraft and buildings used by districts, services or departments meet the equipment and safety standards and eligibility requirements established by the Risk Management Administrator.

F. Any insurance or indemnity coverage shall be obtained or provided solely from funds available in the shared risk pool authorized by Section 85.34b of this title. Any coverage limits shall be based on the liquidity of the shared risk pool resulting from the annual payments made pursuant to Section 85.37 of this title and any interest accrued thereon, after deduction of such sums as may be necessary to pay all overhead and administrative expenses associated with administering the pool.

G. Any limited indemnity coverage provided for errors and omissions pursuant to the provisions of this subsection shall only cover errors or omissions made by a board member, official, employee or volunteer of any entity specified in subsection C of this section occurring after the effective date of this act.

H. The State of Oklahoma is not liable, directly or indirectly, for the errors and omissions of any board member, official, employee or volunteer of any entity specified in subsection C of this section in the performance of his official duties pursuant to law. The State of Oklahoma is not liable, directly or indirectly, for the negligence of any entity specified in subsection C of this section.

I. In providing risk management services for any entity specified by subsection C of this section or any such board member, official, employee or volunteer of such entity, it is the intention of the Legislature to provide coverage solely to the extent of assets in the shared risk pool created by Section 85.34b of this title.

J. Any liability insurance coverage obtained or provided shall include expenses for legal services obtained or provided by the Risk Management Administrator.

SECTION 4. AMENDATORY 74 O.S. 1991, Section 85.35, is amended to read as follows:

Section 85.35 A. There is hereby created in the State Treasury a revolving fund for the ~~Office of Public Affairs~~ Department of Central Services, to be designated the "~~Property and Casualty Risk Management~~ Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies transferred thereto by act of the Legislature and any monies which may be deposited thereto by the ~~Office of Public Affairs~~ Department of Central Services as provided for by law and all interest earned by the State Treasurer on monies deposited in the fund.

B. Within the Risk Management Revolving Fund, there is hereby created the Property and Casualty Account and the Motor Vehicle Liability Account. The Director is authorized to establish such additional accounts within the Risk Management Revolving Fund deemed necessary. The monies in each account shall be maintained actuarially separate to ensure that premiums or fees paid for specific insurance coverage are adequate to pay the expenses and claims for that coverage.

C. Any monies existing in the Motor Vehicle Liability Revolving Fund established by Section 85.36 of this title shall be transferred to the Risk Management Revolving Fund for deposit in the Motor Vehicle Liability Account. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the ~~Office of Public Affairs~~ Department of Central Services for the purposes of the Comprehensive Professional Risk Management Program provided for in Section 85.34 of ~~Title 74 of the Oklahoma Statutes~~ this title, including the salaries and administrative expenses of the Risk Management Administrator and support staff. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 5. AMENDATORY 74 O.S. 1991, Section 85.37, as amended by Section 1, Chapter 133, O.S.L. 1993 (74 O.S. Supp. 1993, Section 85.37), is amended to read as follows:

Section 85.37 The Department of Central Services may levy and collect a reasonable fee from state agencies and ~~political subdivisions of the state~~ other entities covered by the Comprehensive Professional Risk Management Program for the purpose of providing insurance coverage through a self-insurance program, or purchased insurance or a combination thereof. All fees or premiums shall be promptly paid when due and fees or premiums collected in accordance with the provisions of this section shall be deposited in

the appropriate risk management fund. If state agencies fail to pay the insurance fees within ~~ninety (90)~~ forty-five (45) days of due date, the Department of Central Services shall consider the invoice delinquent. The Department may present a claim to the Office of State Finance for payment of the delinquent invoice from funds available to the delinquent agency. The Office of State Finance is authorized to transfer funds to the Department of Central Services to pay the invoice from monies available to the delinquent agency for the general operations of the agency which are not specifically prohibited for such use by federal or state law. If funds of the delinquent agency are not available to pay the invoice in full, the Department of Central Services shall submit claims as necessary to pay the invoice as soon as funds are available from the funds of the delinquent agency.

SECTION 6. AMENDATORY 74 O.S. 1991, Section 85.38, is amended to read as follows:

Section 85.38 The Special Agency Account Board shall create in the official depository of the State Treasury an agency special account for the ~~Office of Public Affairs~~ Department of Central Services to be designated as the "Quick Settlement Account". The purpose of the account shall be the payment of liability claims against the state after a determination by the Risk Management Administration that such payments are in the best interest of the state, are in accordance with the laws and regulations governing the Comprehensive Professional Risk Management Program, and are in an amount not exceeding Ten Thousand Dollars (\$10,000.00). No monies shall be expended from the Quick Settlement Account except as provided for in this section.

The ~~Office of Public Affairs~~ Department of Central Services shall transfer funds as necessary from the ~~Tort Claims Liability Risk Management~~ Revolving Fund and ~~from the Motor Vehicle Liability Revolving Fund~~ to the Quick Settlement Account, provided that the

maximum sum held in the Quick Settlement Account shall not exceed Ten Thousand Dollars (\$10,000.00), excluding funds in transit. Expenditures from the Quick Settlement Account shall be exempt from the provisions of the Oklahoma Central Purchasing Act.

SECTION 7. AMENDATORY 62 O.S. 1991, Section 203, as amended by Section 32, Chapter 327, O.S.L. 1992 (62 O.S. Supp. 1993, Section 203), is amended to read as follows:

Section 203. A. Except as otherwise provided by subsection B of this section, all monies that may come into the State Treasury, pursuant to the provisions of Section 201 et seq. of this title, together with all amounts that may be received by the State Treasurer as investment income or as interest on average daily bank balances, including investment income or interest on deposits from funds deposited to the credit of the Constitutional Reserve Fund created pursuant to Section 23 of Article 10 of the Oklahoma Constitution, shall be apportioned and credited to the General Revenue Fund for the current year.

B. The provisions of subsection A of this section shall not apply to:

1. Interest received on deposits from funds under the control of the Commissioners of the Land Office;

2. Funds in the Department of Human Services Federal Disallowance Fund; ~~and~~

3. Interest received on deposits from funds under the control of the Santa Claus Commission; and

4. The Risk Management Revolving Fund.

SECTION 8. REPEALER 74 O.S. 1991, Section 85.36, is hereby repealed.

SECTION 9. This act shall become effective July 1, 1994.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-8328

KSM